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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 AVERY CAMILLE FREEMEN-  
11 WHEATON,

12 Plaintiff,

13 v.

14 TEXACO CORPORATION, CITY OF  
15 OLYMPIA, THURSTON COUNTY, AND  
KWANG SOO HONG,

16 Defendants.

CASE NO. C13-6028 RBL-JRC

REPORT AND  
RECOMMENDATION

NOTED FOR: FEBRUARY 14, 2014

17 This matter has been referred to the undersigned Magistrate Judge pursuant to Title 28  
18 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Rules MJR 1, MJR 3, and MJR 4. The  
19 matter is before the Court for initial review prior to ordering service of the complaint (ECF No.  
20 1).

21 On December 3, 2013, the Court sent plaintiff a letter outlining the defects in his action  
22 (ECF No. 3). Plaintiff had not paid the filing fee or filed an application to proceed in forma  
23 pauperis. The Clerk's Office gave plaintiff until January 3, 2014 to cure the defects in his filings.  
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1 Plaintiff has not cured the defects or paid the filing fee. The Court recommends dismissal  
2 of this action without prejudice pursuant to Fed. R. Civ. P. 41(b). Fed. R. Civ. P. 41(b) states:

3 If the plaintiff fails to prosecute or to comply with these rules or a court  
4 order, a defendant may move to dismiss the action or any claim against it. Unless  
5 the dismissal order states otherwise, a dismissal under this subdivision (b) and any  
6 dismissal not under this rule--except one for lack of jurisdiction, improper venue,  
7 or failure to join a party under Rule 19--operates as an adjudication on the merits.

8 Plaintiff has failed to prosecute his action by not paying the filing or moving to proceed  
9 in forma pauperis. Because the action has not been served and defendants have not appeared the  
10 Court recommends that the dismissal be without prejudice.

11 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
12 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
13 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
14 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
15 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
16 February 14 2014, as noted in the caption.

17 Dated this 23rd day of January, 2014.

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19 J. Richard Creatura  
20 United States Magistrate Judge  
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